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Court sides with residents in beach battle

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The state cannot compel a group of homeowners on Long Beach Island to grant access to their beachfront property for a beach replenishment project on the fragile barrier island without first exhausting all its options, the Appellate Division ruled yesterday.

In issuing its decision, the court upheld a previous ruling refusing the state's request to order the five homeowners in Surf City to sign easement agreements with the Department of Environmental Protection and the Army Corps of Engineers.

Both courts said the state had not tried to get access to the property through eminent domain.

A number of communities on the 18-mile-long island in Ocean County have experienced severe beach erosion and looked to replenishment as a way to regain wide beaches and protect valuable oceanfront property.

The federal government has allocated nearly \$5 million for replenishment on the island but has required the state to, among other things, obtain perpetual easement rights from oceanfront homeowners for the construction and maintenance of larger dunes.

Some homeowners, including those in Surf City, have refused to sign those agreements. They want to be compensated for the land they give up, or they want more definitive information about the project. Some have said there is no guarantee that the easement won't be turned into a boardwalk decades from now.

In a November 2006 ruling, Superior Court Judge Vincent Grasso, sitting in Toms River, refused to force the homeowners to hand over the property.

Yesterday, the Appellate Division agreed with his finding.

"The core issue here is whether the state can force a private property owner, by way of preliminary injunction, to grant a perpetual public access easement without first following the procedures in the eminent domain act," the ruling said. "We are satisfied that the answer to this question is 'no.'"

The impasse has virtually halted the beach replenishment project on Long Beach Island.

The Army Corps started work in Surf City in late 2006, but that project closed beaches early in the following spring just weeks before Memorial Day weekend. The sand pumped from the ocean floor onto the beach contained more than 1,000 unexploded World War I-era ordnance most likely dumped in the ocean before such offshore dumping was banned, officials have said.

DEP spokeswoman Darlene Yuhas said it is too early to tell what the agency's next move will be, and she would not say whether the ruling will jeopardize the entire project.

"We're disappointed and we will consider our options," she said. "We will continue to require sufficient public access as a prerequisite to spending public funds for beach replenishment."

Even before the decision was issued yesterday, DEP officials were scheduled to meet soon with Army Corps representatives and mayors on Long Beach Island to discuss how to use the federal money on the

island, she said.

Paul H. Schneider, the attorney for Surf City homeowner Michael Ginaldi, said the decision verifies his client's contention that the state refused to tailor the project in a way that would accommodate the communities' differences in basic principles.

He said the state should not end the project based on the outcome of this court case.

"If government is going to use it as an excuse not to do replenish ment elsewhere, then that's all it is -- an excuse," he said.

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